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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,240	02/06/2004	Richard E. Waitkus JR.	016093.0118	9102

23640 7590 02/27/2007		EXAMINER
BAKER BOTTS, LLP 910 LOUISIANA HOUSTON, TX 77002-4995		LAU, TUNG S

ART UNIT	PAPER NUMBER
2863	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
Office Action Summary	10/774,240	WAITKUS, RICHARD E.
	Examiner	Art Unit	
	Tung S. Lau	2863	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>16 January 2007</u>.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1 and 3-32</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1,3-5,8,11,14-19,21,24-26 and 28-32</u> is/are rejected.

7) ☒ Claim(s) <u>6, 7, 9, 10, 12, 13, 20, 22, 23, and 27</u> is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Amendment abstract

1.   Amendment to the abstract filed on 01/16/2007 has been accepted by the

examiner.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this
or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 15, 24, 3, 4, 5, 8, 11, 14, 16, 25, 17, 18, 26, 19, 21, 28, 29, 30, 32 and

31 are rejected under 35 U.S.C. 102(a) as being anticipated by Nadir (U.S.

Patent Application Publication 2002/0077875).

Regarding claim 1:

Nadir discloses a material management system including: one or more waste

containers adapted to receive and compact waste (abstract); a fullness-

measuring subsystem for determining the fullness of one or more waste

containers (fig. 1, page 1, section 0007); a computerized scheduling subsystem

in communication with the fullness-measuring subsystem for automatically

determining an optimal time to empty each waste container (fig. 1, page 3,

section 0028-0036), based the fullness of the waste container (fig. 1, truck with

waste container) and scheduling factors (page 3, section 0028-0030) including

customer preferences (page 2, section 0034, no customers want the waste

container overflow) and waste hauler limitations (page 2, section 0022), and

where the computerized scheduling subsystem (fig. 1, unit computer) stores at

least one scheduling factor before determining the optimal time to empty each

waste container (page 3, section 0030).

Figure 1: Basic System configuration
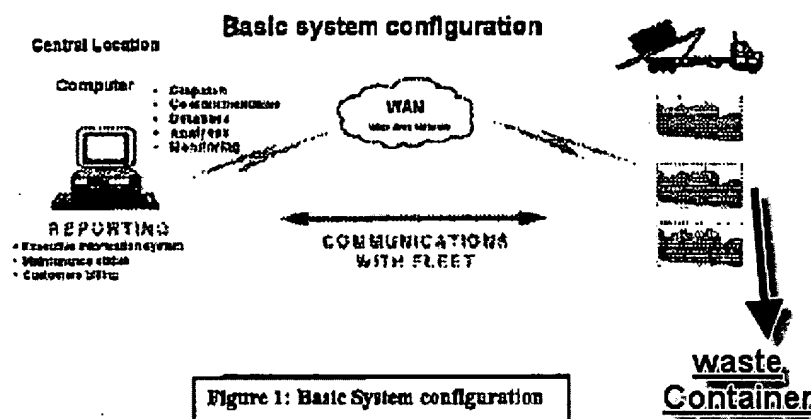
Regarding claim 15:

Nadir discloses a computerized method for scheduling a pick up time to remove

of one or more waste containers, including, for each waste container (abstract,

fig. 1), automatically determining a fullness of the waste container (page 2,

section 0016); automatically determining when a waste container will a target

level of fullness (page 2, section 0022), based on the current fullness and

predicted future usage (page 2, section 0012, 0023, page 3, section 0030);

storing at least one scheduling factor selected from the group of scheduling

factors consisting of customer preferences and waste hauler limitations (page 3,

section 0033-0034, so that container will not overflow); automatically determining

an optimal time to remove the waste container (page 2-3, section 0030), based

on when the waste container will reach the target level of fullness (page 2, section 0022), customer preferences (page 2, section 0034, no customers want the waste container overflow), and waste hauler limitations (page 2, section 0022); and automatically scheduling the removal of the waste container for the optimal time (page 3, section 0033-0035).

Regarding claim 24:

Nadir discloses a computer program, stored on a tangible storage medium, for use in scheduling a pick up time to remove one or more waste containers, the computer program including executable indications that cause a computer to (fig. 1), for each waste container (fig. 1); determine a fullness of the waste container; determine when the waste container will reach a target level of fullness (page 2-2, section 0022), based on the current fullness and predicted future usage (page 2, section 0022); storing at least one scheduling factor selected from the group of scheduling factors consisting of customer preference and waste haul limitation ((page 3, section 0033-0034, so that container will not overflow), determine an optimal time to remove the waste container (page 3, section 0030), based on when the waste container will reach the target level of fullness (page 2, section 0022), customer preferences (page 2, section 0034, no customers want the waste container overflow), and waste hauler limitations (page 2, section 0022); and schedule the removal of the waste container for the optimal time (page 3, section 0033-0035).

Regarding claim 3, Nadir discloses including the optimal time is the latest time that satisfies customer preferences (page 3, section 0034, no customers want the waste container overflow), and waste hauler limitations (page 2, section 0034, the container never overweight, overflow).

Regarding claim 4, Nadir discloses a preference that the customer's waste container only reach a certain level of fullness (page 2, section 0022-0023).

Regarding claim 5, Nadir discloses a number of drivers available at a specified time (page 3, section 0032, schedule depend on how many truck is on the fleet, ie. each truck is schedule in the fleet).

Regarding claim 8, Nadir discloses including a communication subsystem in communication with the computerized scheduling subsystem for notifying the waste hauler when to remove the waste container (page 3, section 0032).

Regarding claim 11, Nadir discloses the predicted future usage is based on statistical analysis, performed by the computerized scheduling sub-system, of customer usage patterns including prior recorded fullnesses (page 3. section 0030).

Regarding claim 14, Nadir discloses determines when to accomplish the scheduling of the waste container removal, based on the optimal time and one or more waste hauler limitations (page 3, section 0030-0032).

Regarding claims 16, 25, Nadir discloses percentage of the fullness (page 2, section 0022).

Regarding claim 17, Nadir discloses percentage of the fullness is about 100% (page 2, section 0022).

Regarding claims 18, 26, Nadir discloses automatically determining when to accomplish the scheduling of the waste container removal, based on the optimal time and one or more waste hauler limitations (page 2, section 0022-0024).

Regarding claim 19, Nadir discloses latest time to accomplish the scheduling (page 2, section 0022-0024).

Regarding claim 21, Nadir discloses automatically determining when the waste container will reach the target level of fullness, based on predicted future usage (page 2, section 0022-23), includes analyzing customer usage patterns (page 2, section 0016).

Regarding claim 28, Nadir discloses analyze customer usage patterns when determining when the waste container will reach the target level of fullness (page 2, section 0016, 0022).

Regarding claim 29, Nadir discloses the customer preferences include one or more preferences selected from the group consisting of: a preference that the customer's waste container only reach a certain level of fullness (page 3, section 0033-34, no customer wants the waste container to overfill); a preference that the customer's waste container not be emptied on certain days of the week; and a preference that the customer's waste container not be emptied during certain hours of the day.

Regarding claims 30, 32, Nadir discloses operating hours of waste hauler's dispatcher office (page 2, section 0022).

Regarding claim 31, Nadir discloses the customer preferences include one or more preferences selected from the group consisting of a preference that the customer's waste container only reach a certain level of fullness (page 3, section 0033-34, no customer wants the waste container to overfill); a preference that the customer's waste container not be emptied on certain days of the week; and a preference that the customer's waste container not be emptied during certain hours of the day.

Allowable Subject Matter

3.   Claims 6, 7, 9, 10, 12, 13, 20, 22, 23, and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitation of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: prior art fail to teach:

Regarding claim 6:

If no time satisfies customer preferences and waste hauler limitations, the computerized scheduling system will choose an optimal time that satisfies one or more customer preferences.

Regarding claim 7:

If no time satisfies customer preferences and waste hauler limitations, the

computerized scheduling system will choose an optimal time that satisfies one or

more waste hauler limitations.

Regarding claim 9:

The computerized scheduling system is subject to user-intervention.

Claim 10 is objected due to their dependency on claim 9.

Regarding claim 12:

Where the statistical analysis, performed by the computerized scheduling sub-

system, of customer usage patterns includes linear regression.

Regarding claim 13:

Causes the fullness-measuring subsystem to determine again the fullness of the

waste container and the optimal pickup time, a lead time before scheduling

the waste container removal; and if the optimal removal time has changed,

determining again when to accomplish the scheduling of the waste container

removal.

Regarding claim 20:

Automatically determining again the fullness of the waste container and the

optimal pickup time, a lead time before scheduling the waste container removal,

and if the optimal removal time has changed, determining again when to

accomplish the scheduling of the waste container removal.

Regarding claim 22:

Automatically scheduling the removal of the waste container for the optimal time

is subject to user-intervention.

Claim 23 is objected due to their dependency on claim 22.

Regarding claim 27:

Determine again the fullness of the waste container and the optimal pickup time,

a lead time before scheduling the waste container removal, and if the optimal

removal time has changed, determining again when to accomplish the

scheduling of the waste container removal.

Response to Arguments

4.   Applicant's arguments filed 01/16/2007 have been fully considered but they are

not persuasive.

A. Applicant argues in the arguments that the prior art does not show the

'determining an optimal time to empty each waste container, based on the

fullnesses of the waste container and scheduling factors including

customer preferences and waste hauler limitations and where the

computerized scheduling subsystem stores at least one scheduling factor

before determining the optimal time to empty each waste container'

(applicant Remarks page 12, lines 29-33), the applicant mention that the prior art

'Golan' (applicant Remarks page 12, lines 33) while "Golan' was never use in the

current rejection, the examiner assume the applicant mean Nadir which is the

current rejection.

Nadir discloses 'determining an optimal time to empty each waste container

(fig. 1, page 3, section 0028-0036), based on the fullnesses of the waste

container (fig. 1, truck with waste container) and scheduling factors (page 3,

section 0028-0030) including customer preferences (page 2, section 0034, no

customers want the waste container overflow) and waste hauler limitations

(page 2, section 0022), and where the computerized scheduling subsystem

stores (fig. 1, unit computer) at least one scheduling factor before

determining the optimal time to empty each waste container (page 3,

section 0030).'

Reminds to the applicants that during patent examination, the pending claims

must be "given the broadest reasonable interpretation consistent with the

specification." Applicant always has the opportunity to amend the claims during

prosecution, and broad interpretation by the examiner reduces the possibility that

the claim, once issued, will be interpreted more broadly than is justified. In re

Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). While the

meaning of claims of issued patents are interpreted in light of the specification,

prosecution history, prior art and other claims, this is not the mode of claim

interpretation to be applied during examination. During examination, the claims

must be interpreted as broadly as their terms reasonably allowed. Although the

claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181,

26 USPQ2d 1057 (Fed. Cir. 1993).

This means that the words of the claim must be given their plain meaning unless

applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d

319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Where there are several

common meanings for a claim term, the patent disclosure serves to point away

from the improper meanings and toward the proper meanings. See also MPEP §

2111.01. USPTO personnel are to give claims their broadest reasonable

interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048,

1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Limitations appearing in the specification but not recited in the claim are not read

into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67

USPQ2d 1947, 1950 (Fed. Cir. 2003).

B. Applicant argues in the arguments that the prior art does not show

'determining an optimal time to empty a waste container based on waste

hauler limitations' (applicant Remarks page 13, lines 30-33). Again, Golan was

refer here but Golan was never use in the current rejection, the examiner assume

the applicant mean Nadir which is the current rejection.

Nadir discloses determining an optimal time to empty a waste container

based on waste hauler limitations' in page 3, section 0028-0033, this section

Nadir talks about the optimal time to remove the container among other factors

are pickup based on the trash never over-spill (section 0033, lines 8-9, the above

section read on to the limitation the applicant try to claim.

Reminds the applicant that a prior art reference anticipates the subject of a claim

when the reference discloses every feature of the claimed invention, either

explicitly or inherently (see Hazani v. U.S. Int'l Trade Com'n, 126 F.3d 1473,

1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital

Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385,388 (Fed. Cir. 1984));

however, the law of anticipation does not require that the reference teach what

the appellants are claiming, but only that the claims on appeal "read on"

something disclosed in the reference (see Kalman v. Kimberly-Clark Corp., 713

F.2d 760, 772, 218 USPQ 781,789 (Fed. Cir. 1983).

C. Applicant continues to argue in the arguments that the prior art does not show

'scheduling factors be stored before determining the optimal time tot empty each

waste container' (applicant Remarks page 14, lines 1-2). Again, Golan was refer

here (applicant Remarks page 14, lines 2-5). but Golan was never use in the

current rejection, the examiner assume the applicant mean Nadir which is the

current rejection. Nadir discloses 'scheduling factors be stored before

determining the optimal time tot empty each waste container' in page 3, section

0030, this section Nadir talks about the pickup schedule is real time depend how

full the containers are section 30, lines 1-5, it read on to 'scheduling factors be

stored before determining the optimal time tot empty each waste container'.

D. Regarding that the following remarks (Page 9, lines 15-22 of the applicant

Remarks):

> Applicant notes that the Advisory Action mailed July 3, 2006 stated that Applicant's
> amendments "raise new issues that would require further consideration and/or search." Advisory
> Action mailed July 7, 2006, page 1. Applicants note that the current Office action relies on **the
> same reference** to reject the amended claims. Applicant therefore takes issue with the assertion
> that Applicant's amendments "raise new issues that would require further consideration and/or
> search." As Applicant has shown repeatedly and shows again in this response, each of the claims
> are allowable and Applicant desires to have this application allowed and would prefer to appeal
> this case as soon as possible if the Examiner is not amenable to allowance.

The examiner indicated that during an advisory action that raise new matter and

required further search and consideration, The examiner never indicated that

Nadir is not qualify for the rejection (see advisory action dated 07/03/2006). The

examiner is well aware of the applicant's right to appeal under the PTO policy.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed

within TWO MONTHS of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory

period, then the shortened statutory period will expire on the date the advisory

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact information

5.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S Lau whose telephone number is 571-272-2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TL

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